

PUBLIC WORKS DEPARTMENT
HARYANA IRRIGATION BRANCH

The 27-28th May, 1968

No. 1738/Admn. Shri Gurmuhi Singh, Officiating Deputy Superintendent, Irrigation Branch Head Office, Haryana, is, her by, promoted provisionally as Officiating Superintendent in the scale of Rs. 50-25-500-30-670 with effect from the forenoon of 27th May, 1968, vice Shri Ganga Bisht, Officiating Superintendent, on leave.

B. S. BANSAL,

Chief Engineer (Projects),
Irrigation Works, Chandigarh Haryana.

LABOUR DEPARTMENT

The 29th May, 1968

No. 4665-3Lab-68/13447. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Milhard Private Ltd., Faridabad :

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, CHANDIGARH

REFERENCE NO. 8 OF 1968
Between

THE WORKMEN AND THE MANAGEMENT OF M/S MILHARD PRIVATE LIMITED.
FARIDABAD

Present.—Shri S. L. Gupta, for the management.

Shri Roshan Lal for the workmen.

AWARD

An industrial dispute having come in to existence between the workmen and the management of M/s Milhard Private Limited, Faridabad, over the following item, the same was referred for adjudication to this tribunal under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, *vide* Haryana Government Notification No. ID/FD/77B/1447 dated 16th January 1968:—

“Whether the lay-off of 50 workers for the period from 26th July, 1967 to 30th August, 1967 was justified and in order ? If not to what relief are they entitled ?”

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. A preliminary objection was taken by the management that the dispute in question was not an industrial dispute and that the award in the previous case between the same parties which was reference No. 86 of 1967 operated as *resjudicata* in the present case. Issues No. 1 and 2 were framed with regard to this objection and they are as under :—

- (1) Is not the dispute in question an industrial dispute for the reasons given in the written statement of the management?
- (2) What is the effect of the previous award referred to in preliminary objection of the written statement?

Parties were given opportunities to lead their evidence in respect of the aforesaid issues as also in respect of issue No. 3 which is precisely the same the item of dispute mentioned above. After the close of the evidence I heard the argument of the parties but later on I thought it necessary that the statement of Shri Roshan Lal, President of the General Labour Union at whose instance the reference was made should be recorded. The said statement was recorded on 3rd May, 1968, and the arguments of the parties were re-heard on the same date.

Issues No. 1 & 2.—The main objection taken by the management on which these two issues are based is that “the dispute had not been properly raised because the workmen of the respondent concern neither were nor are members of the General Labour Union when the dispute was either raised or the same was referred to this Hon'ble Tribunal”. In the previous reference No. 86 of 1967 which was also between the same parties a similar objection was taken by the management and the statement of Shri Roshan Lal, President of the General Labour Union, at whose instance the said reference had also been made was recorded by me on 15th February, 1968. Shri Roshan Lal in that statement had said:—

“About 10 or 15 workmen of M/s Milhard Private Ltd., had come to our union when we issued the demand notice. They became our members. They ceased to be our members later on before the date of the present reference. We have no member out of the workmen of M/s Milhard Private Ltd. I have no more interest in this case. No workman of this factory ever paid any subscription to our union. According to our bye-laws there can be no member who does not pay any subscription. None of the workmen of M/s Milhard Private Ltd., really became the member of our trade union.”

In the award which I made in that case and a gazette copy of which is Ex. R. 1., I said as under :—

“Shri Roshan Lal stated that about 10 or 15 workmen of M/s Milhard Private Ltd., Faridabad had come to his union when he issued the demand notice. He further stated that they became members of the union on that date but ceased to be their members before the date of the present reference. He admitted that the said union had at the moment no member out of the workmen of

M.S. Milhard Private Ltd., Faridabad and that the union had no more interest in the case. He also admitted that no workman of the factory ever paid any subscription to his union and further stated that according to the bye-laws of the union they could not enroll any member without receiving subscription from him."

In the present case, however, he has made a statement that on 24th July, 1967 the trade union in question had about 70 or 80 workmen of this concern as its members. He has further stated that all of them had become its members on 12th June, 1967, and each of them had paid Rs. 3 as subscription to the union on 12th June, 1967. He has produced a register giving a list of the members who are the workmen of this concern and has also produced the counterfoils of the receipts of subscription. He has also produced a register in which proceedings of a meeting were recorded. None of the documents produced by him appears to me to be genuine. No register of membership is kept in which the names of all the members from different factories may have been entered serially. The receipt book, the counterfoils of which have been produced is stated to relate exclusively to the workmen of this concern and there is no receipt book where subscription of all the members may have been entered. The proceedings of the meeting stated to have been held on 24th July, 1967 are recorded in pencil in a register in which about 10 pages on both sides of the record of the said proceedings are lying blank and in which proceedings of no other meetings have been recorded. Shri Roshan Lal has not been able to explain the reasons for all these irregularities in the various registers. He has admitted, "we are keeping a cash book in which subscription are entered. The cash book is in the head office and I have not brought the same." If this cash book had been produced it would have atleast shown whether the allegation that the subscriptions were received from 70 or 80 workmen of M/S Milhard Private Ltd., on 12th June, 1967 is or is not true. For reasons best known to Shri Roshan Lal he has not produced the said cash book. The previous statement made by him was put to him and he admitted the said statement to be correct, although he added that "I did not state there that even on the date of reference no workman of M/S. Milhard Private Ltd., was our member". I have quoted his previous statement above in which he had definitely said this. It may be noted that the previous reference was made on 7th September, 1967 and if his statement in the previous reference is read it makes it clear that from 7th September, 1967 to 15th February, 1968 no workman of M/S Milhard Private Ltd., was the member of his trade union namely General Labour Union, and that no workman of that concern had ever paid any subscription to the trade union in question and that according to the bye-laws of the union no workman of the said concern had ever become member of the General Labour Union. The present reference was made on 16th January, 1968 which is the date inbetween 7th September, 1967 and 15th February, 1968. Obviously no workman of the concern in question was a member of the General Labour Union on the aforesaid date and the said union had, therefore, no right either to represent the workmen of that concern or to have a reference made in respect of their demands. In fact the previous statement makes it clear that at no stage did any workman of M/S Milhard Private Ltd., become a member of the trade union in question. It is a pity that the said trade union has produced documents which to my mind are not genuine and which seem to have been concocted only for the purposes of this case. Issues No. 1 & 2 are decided in favour of the management and against the workmen. In the result the reference is held incompetent and no relief can possibly be given to the workmen in the present case. The demand in question is accordingly dismissed.

No order as to costs.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

Dated 17th May, 1968.

No. 600, dated Chandigarh, the 18th May, 1968.

The award be submitted to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 4664-3Lab-68/13450.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh in respect of the dispute between the workmen and management of M/s Sharco Industries Private Ltd., Faridabad :—

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, CHANDIGARH
Reference No. 26 of 1968

Between

THE WORKMEN AND THE MANAGEMENT OF M/S SHARCO INDUSTRIES PRIVATE LTD.,
FARIDABAD

Present.—Shri S.L. Gupta for the management.
Shri Darshan Singh for the workmen.

AWARD

By means of their notices dated October 14, 1967, the management of M/s Sharco Industries Private Ltd., Faridabad retrenched 9 of their workmen who are :—

- (1) Shri Chanda Khan.
- (2) Shri Nanhay Khan.
- (3) Shri Sita Ram.
- (4) Shri Habib Ahmad.
- (5) Shri Shafiq Ahmad.
- (6) Shri Ram Charib.

- (7) Shri Haseen Khan
- (8) Shri Ali Ahmad
- (9) Shri Abdul Wahab

The aforesaid workmen were members of a trade union named The Faridabad Engineering Workers Union, Faridabad. The said union served a demand notice dated October, 18, 1967 on the management alleging that the retrenchment made by them was illegal and demanding that the aforesaid workmen should be reinstated with immediate effect on their old jobs with full back wages and continuity of service. The conciliation proceedings with regard to the above matter having presumably failed, the Government of Haryana has made a reference of the said industrial dispute to this Tribunal under clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947, *vide* Notification No. ID/FD/261B/6019, dated 5th March, 1968. In the reference, however, the only matter which has been referred is in the following language :

"Whether the following retrenched workers should be re-employed on the old terms and conditions and the wages which they were getting at the time of their retrenchment. If so, with what details and from which date ?"

- (1) Shri Chanda Khan.
- (2) Shri Nanhay Khan.
- (3) Shri Sita Ram.
- (4) Shri Habib Ahmad.
- (5) Shri Shafiq Ahmad.
- (6) Shri Ram Charib.
- (7) Shri Haseen Khan.
- (8) Shri Ali Ahmad.
- (9) Shri Abdul Wahab."

The language of the reference suggests that the retrenchment of the workmen referred to above has been accepted as correct and what has now been referred is only the question whether the said retrenched workmen should have been re-employed on the old terms, conditions and wages which they were getting at the time of their retrenchment. It may be mentioned here that after the alleged retrenchment the management gave notices on November 17, 1967 to all the aforesaid workmen that the management was desirous of re-employing the said workmen and that each of them should report for duty if he so desired. In the last paragraph of the said notices, which are in the same form, it is said as under :—

"Please note that you will be paid the same basic wages that you were getting earlier or the amount calculated at the rate of 20 paise per piece of polished rim whichever is higher."

Each of the workmen replied to the said notice served on him and in the reply each of them stated that he regretted to say that he had been asked to join duty on reduced rate of wages calculated at the rate of 20 paise per piece. Each of them further stated that he was ready to join duty on payment of back wages and with continuity of service. None of them showed any inclination to join duty on the wages suggested in the letter of the management dated November, 17, 1967. In the statement of claims which has been filed in this tribunal on behalf of the workmen it is pointed out that the workmen were entitled to be reinstated with their back wages and continuity of service. This statement of claims, however, is contrary to the terms of reference. I am quite clear in my mind that the reference as it stands does not permit me to adjudicate with regard to the legality or illegality of the retrenchment of the workmen referred to above. The scope of the reference is limited to the point whether the retrenched workmen should be re-employed on the old terms and conditions as also on the wages which they were getting at the time of their retrenchment. Section 25-H of the Industrial Disputes Act, 1947 on which reliance is placed by the workmen reads as under :—

"25-H : Re-employment of Retrenched workmen Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons."

This section imposes an obligation on an employer to give first preference to the retrenched workman whenever he decides to increase the strength of his establishment. The employer must first offer the job to a retrenched workman before he engages any other person. The section uses the word 're-employment' as contradistinguished from the word 'reinstatement'. When the scope of the two words re-employment and 'reinstatement' is considered it becomes inevitable that the re-employment is distinct from reinstatement and unlike reinstatement it need not be made on the same terms and conditions on which the workman had been previously employed. It may be that the conditions of employment of labour change in course of time and when the employer calls a retrenched workman for re-employment, the conditions of labour and the wages payable to the workmen may be different than those which were prevalent at the time when he was retrenched. Section 25-H of the Act does not impose any liability on the employer to offer the same terms and conditions of service to the retrenched workmen which they were having before their retrenchment. In *India Hume Pipe Company Ltd.*, and *Bhimarao Baliram Gajbhiya-1965-II-LLJ-402.*, a division bench of the Bombay High Court observed as follows at page 404 of the report :—

"Reference has been made to the decision of the Andhra Pradesh High Court in *Indian Hume Pipe Company Labour Court* (1963-I-LLJ-770) (*Vide Supra*) ; at p. 775, it has been observed :

"The word 're-employment' in our opinion, connotes employment on the same terms as before. The meaning given in the Oxford English Dictionary is 'to employ again, to take back into employment'. This implies employment on the same terms and conditions of service. In our considered judgement, the obligation to employ the workmen on the same conditions as to emoluments, etc., is implicit in the concept of re-employment."

With respect, we find ourselves unable to agree that the word "re-employment" necessarily connotes employment on the same terms as before. All that S. 25-H provides for its preference to retrenched workmen in securing employment, but it does not say that the re-employment should be on the former terms and conditions of service. If that had been the intention of the Legislature, it would have made a specific provision to that effect."

I hold that, that the retrenched workmen to whom the reference relates are not entitled to be re-employed necessarily on the same terms and conditions of service and on the same wages which were applicable to them at the time of their retrenchment. The demand of the workmen fails and is dismissed.

No order as to costs

K.L. GOSAIN,

Dated 18th May, 1968.

Presiding Officer,
Industrial Tribunal, Hary...
Chandigarh.

No. 601, dated Chandigarh, the 18th May, 1968.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K.L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Hary...
Chandigarh.

R.I.N. AHOOJA, Secy.